

III. NMTV IS A SHAM ENTITY AND A FRONT
FOR TBN. HAVING PERPETRATED A FRAUD ON THE
COMMISSION, TBN, LIKE NMTV, IS UNQUALIFIED
TO HOLD A BROADCAST LICENSE.

The very existence of "NMTV" is an abuse of the
Commission's processes. As demonstrated below, TBN's creation
and holding out of NMTV as though it is a minority controlled
entity manipulates the minority ownership policy in a way which

1. Duff and Aguilar do not control NMTV. As shown in the Petition, TBN operates NMTV. TBN and NMTV have the same President. TBN raises NMTV's money through on-air broadcasts.^{8/} NMTV uses TBN's address, lawyer and engineer, phone number and post office box. It uses TBN's form EEO programs, program statements, issues-programs lists and ascertainment procedure. Its "directors" are not compensated. Duff is on Crouch's personal staff, with the title of "Administrative Assistant". Duff and Aguilar have no experience operating television stations. Neither Duff nor Aguilar will play any significant role in the operation of WTGI-TV, and they have advanced no funds toward NMTV. Petition at 11-13. The Opposition, at 31-33, essentially admits all of these facts.

None of this happened by accident. Since the Petition was filed, one of the public files (that of WCLJ-TV), whose contents had been unsuccessfully sought by Petitioner's representative before the Petition was filed, became available. Therein was contained Exhibit 9, a draft document identified in the May 10, 1988 cover letter from TBN's attorney as the "Generic Statement For The Public File On Ascertainment And Issue Identification." It is apparently the same document being used by NMTV.

^{8/} NMTV's assertion that it has its own bank accounts is a half truth. See Opposition at 11, 31. NMTV apparently airs no programming of its own, and conducts no fund-raising on its own. TBN does all of that. It is immaterial that NMTV performed the ministerial act of opening a bank account to deposit money it received from TBN.

Furthermore, TBN has behaved in practice as though it runs NMTV. As shown in Exhibit 10, Crouch spent most of a day with Petitioner while visiting Philadelphia to plan the acquisition. During that time, he never once mentioned NMTV, and Petitioner did not know that NMTV, and not TBN, would be the proposed assignee until the application was filed. Crouch told Petitioner that the station would be operated essentially as a TBN satellite, and he offered Petitioner a job -- not with NMTV, but with TBN.

The Opposition responds in a most curious method of pleading. Those facts favorable to NMTV are openly asserted (albeit without a shred of documentary evidence as proof). NMTV claims that

NMTV has its own bank accounts, and has its own revenues, from the sale of broadcast time and spots. NMTV receives its own contributions as a recognized 501(c)(3) organization. NMTV is qualified to do business in California, Texas and Oregon. and is in good standing and has

However, NMTV offers no proof -- not even one set of verified Board minutes -- showing that Duff, Espinoza or Aguilar ever did anything for NMTV, or, in Duff's case, that whatever she did was not already being done by her anyway for TBN.

NMTV's form of pleading is identical to that condemned in RKO General, Inc. v. FCC, 670 F.2d 215, 229-30, 232 (D.C. Cir. 1981), cert denied, 456 u.S 927 (1982) ("RKO"). This practice of bestowing favorable facts or half-truths but proffering only

If Aguilar's remarkable admission (which was not the subject of any correction by the newspaper) is true, then NMTV is just what Petitioner has asserted it to be: a pure minority sham, masterminded by Paul Crouch through his subordinate Jane Duff, who he controls in her capacity as his "Administrative Assistant".^{9/}

Aguilar, whose "ministry" is financed in large part by TBN, and who characterizes himself as a "figurehead" in NMTV, simply goes along for the ride to add minority weight to NMTV on paper.

Aguilar's admission that he is a "figurehead" is supported by facts NMTV cannot deny. The Register articles report, inter alia, that TBN has backed and heavily invested in Aguilar's "Set Free" operation. The article "TBN helped Set Free get off ground" (in Exhibit 8 hereto) maintains that

The Crouches have provided Aguilar with more and more real estate to operate his borgeoning ministry and aided his entree into the glitzy world of televangelism. In return, Aguilar has provided the Crouches with a much-needed minority corporate presence to expand their already robust broadcast holdings.

^{9/} NMTV makes much of Duff's position as "virtually the second highest management office in the Network's hierarchy." Opposition at 34. The second highest office" is meaningless, of course, if the highest office is vested with 100% decisionmaking control. NMTV admits that Duff is Crouch's "Administrative Assistant", although a reliable press report characterizes her as only Crouch's secretary. M. Pinsky, "Liberal Reading of FCC Minority Rule has Helped TBN's Growth," Los Angeles Times, January 28, 1989, Metro Section, P. 1 Col. 1 (Exhibit 18 to the Petition). Whether Duff is Crouch's "Administrative Assistant" or his secretary, she is clearly a subordinate, non-decision

The article maintains that the Crouches gave Aguilar two homes and free use of two "ranches". Aguilar uses the ranches as his Siberia, banishing to the ranches those unfaithful to him, for time at hard labor. See discussion at §V herein. When charges of misconduct against Aguilar began to surface in the fall of 1990, TBN produced an hourlong video about Aguilar and his "ministry." Id. Moreover, Aguilar frequently receives free time on TBN's national programming. Aguilar is, or ought to be, profoundly indebted to TBN. TBN's largesse gives Aguilar a heavy motive to be used, in return, as TBN's minority "figurehead."

The best known comparable case is Metroplex Communications, Inc., 5 FCC Rcd 5610, 5611 (1990). There, a minority person who supposedly was the general partner actually had little to do with the formation of the applicant. A law firm organized the limited partners and recruited the general partner to do little more than execute the application. The "general partner" had no broadcast experience and made no investment in the enterprise. The Commission found it incredible that "a group of experienced investors (including those with past broadcast ownership) would grant exclusive control of their station to a virtual stranger with no broadcast experience, who would make no investment in the station." Id. at 5612; see also KIST Corp., 102 FCC2d 288, 292 (1985) (subsequent history omitted).

Here, of course, Duff and Aguilar are not literally "strangers" unknown to Crouch and TBN. Duff is Crouch's Administrative Assistant, and regardless of whether her duties are or are not basically secretarial, the fact remains that she is entirely dependent upon TBN for her personal income. She does not even possess the surface comfort level most minority fronts enjoy in their roles as putative general partners, with written limited partnership agreements purporting to insulate the real parties in interest from day to day involvement. Crouch did not trust Mrs. Duff enough to put her in charge of NMTV: recall that Mrs. Duff formerly was TBN Vice President, but she was demoted, a fact NMTV's Opposition does not deny. See Petition at 10 and Exhibits 15-16 thereto. Crouch serves as NMTV's President and calls the shots. A front operation does not establish legitimacy by fronting a relative (or, by implication, an employee) rather than a stranger. See Arnold L. Chase, 5 FCC Rcd 1642 (1990) (real party in interest had close family ties.)

From these facts alleged in the Petition to deny and not

NMTV's final resort is its misreading of Roanoke Christian Broadcasting, Inc., 52 RR2d 1725 (Rev. Bd. 1983), aff'd, FCC 83-441 (released September 27, 1983). That case holds that inasmuch as a nonprofit institution lacks voting stockholders, the Commission looks to its Board for evidence of control. However, Roanoke does not reach nearly as far as NMTV wants it to reach. It holds that attribution to a nonprofit organization's board members is no different from other attribution in other cases, being dependent on "weighing all available factors and evidence of record." Id. at 1727.

3. The effect of NMTV's domination by Crouch must be the denial of NMTV's application. An obvious sham application need not be proven a sham only under the standard comparative issue, with the only effect being denial of integration credit. Instead, as anyone familiar with Sonrise Management Services, Inc. is aware, the Commission routinely designates an additional "sham application" issue in such instances. These issues are disqualifying. See, eg., Hawthorne FM Partnership, 5 FCC Rcd 5194 (ALJ 1990).

The Commission has also repeatedly emphasized that an attempt to misrepresent an applicant's genuine ownership structure is not merely a comparative matter, but a basic qualifying issue. See, eg., Massilon Broadcasting Co., Inc., 22 RR2d 218, 220-21 (1968); Rayne Broadcasting Co., Inc., 5 FCC Rcd 3350, 3353 (Rev. Bd. 1990); Tequesta TV, Inc., 2 FCC Rcd 7324, 7325 (Rev. Bd. 1987).

Use of a sham structure is particularly cynical and reprehensible when its purpose is to take commercial advantage of a rule designed to assist underserved and genuinely qualified minorities to enter the industry.

Indeed, the Board left no doubt about its view of misuse of the minority ownership policies in its handling of Silver Star. The President of Silver Star, Dr. John R. Lee, was a former President of the National Association of Black Owned Broadcasters -- hardly a stranger to the intended scope of the policy. Nonetheless, the Board found Lee unqualified based on his alleged abdication of control of a station purchased through the distress sale policy to Ronald Rivers, son of the individual whose wrongdoing resulted in the distress sale.

Except that Lee is Black and Crouch is White, the similarities between Silver Star and the instant case are remarkable. Dr. Lee, like NMTV in fact held legal control of his stations. His name was on the licenses, and at least theoretically he exercised ultimate responsibility for the stations. However, at hearing, he was shown not to exercise final authority over the stations. Ron Rivers made all final decisions.

A principal element of Lee's defense was the same as that

Indeed, the Board expressly held that Dr. Lee had abused the Commission's processes by subverting a policy "strictly and expressly intended to expand 'minority ownership and participation in management'" (citing Statement of Policy on Minority Ownership in Broadcasting, 68 FCC2d 979, 982 (1978) (emphasis supplied). Even conceding that Dr. Lee in fact "owned" Silver Star, the Board found that Silver Star "made no attempt to assert minority control over the Cordele stations, or to inject its own minority participation into station operations." Id. at 6353. After the distress sale, "nothing changed: neither station management, nor programming, nor public service policy." Id.

The bottom line is that if NMTV is not a valid minority owned entity -- and it is not -- and if Paul Crouch really controls NMTV -- which he does -- then grant of this application will give Crouch an attributable interest in 13 television stations. This the Commission cannot allow. In comparable situations, it takes the requirements of §73.3555 of the Rules very seriously. See, eg., Ocean Pines LPB Broadcasting Corp., 5 FCC Rcd 5821 (Rev. Bd. 1990) (real party in interest in two FM applications in adjacent communities would result in violation of the signal overlap rule). It can do no less here.

If it allows TBN to get away with this without a hearing, it must overrule Silver Star, KIST and Metroplex, not to mention the Sonrise Management "sham" line of cases. Those cases cannot be distinguished away to save NMTV. While the Commission has broad discretion to overrule past precedents, it can do so only where it shows that real world conditions have fundamentally changed. Office of Communication of the United Church of Christ v. FCC, 560 F.2d 529, 533 (2d Cir. 1977) (refusing to uphold FCC cutback of scope of its EEO Rule.) The Commission can hardly say that minority fronts are no longer a problem and no longer need to be removed from broadcasting, root and branch.

IV. NMTV PRINCIPAL PHILIP AGUILAR IS A CONVICTED FELON WITH A HORRIBLE RECORD OF CHILD ABUSE. HE HAS NOT BEEN FULLY REHABILITATED, AND IS NOT THE TYPE OF PERSON THE COMMISSION CAN TRUST WITH A BROADCAST LICENSE.

In seeking additional time to file this Reply, Petitioner noted that two newspaper articles containing very significant allegations relating to Philip Aguilar and "Set Free" had just been published in the Orange County Register.

The articles are appended hereto as Exhibit 8. They detail, at great length, numerous allegations of criminal and highly unethical conduct, including child abuse and manipulating members of his religious cult organization, by Philip Aguilar, NMTV's supposed 1/3 owner.

After Petitioner received the articles, he immediately sought additional time to attempt to obtain independent verification of their contents. That verification was received and is appended hereto as Exhibit 11. It consists of over 300 pages of declarations from former "Set Free" members and family members of "Set Free" members.

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Surely TBN's principals had to know that there was something to the charges against Aguilar -- otherwise they would never have made a supportive video for him this spring. They would hardly have let Aguilar use two ranches without knowing how he uses them. If it now claims ignorance of Aguilar's activities, TBN will stand in the same shoes as the shipbuilding company which complained that it didn't know that the ships it built would be used to transport African slaves.

Crouch and TBN are simply too closely intertwined in "Set Free" to separate themselves for regulatory purposes. If, as can be anticipated, TBN tries to distance itself from Aguilar, the Commission must hold the bed to already be made: TBN must sleep in it.

VI. NMTV IS NOT FINANCIALLY QUALIFIED, AND HAS ATTEMPTED TO MISLEAD THE COMMISSION AND THE PUBLIC CONCERNING ITS FINANCIAL QUALIFICATIONS

The Petition to Deny essentially alleged that NMTV was continuing to seek financing well after it represented to the Commission that it had reasonable assurance of financial qualifications to purchase WTGI-TV. In particular, Petitioner demonstrated that through its on-air fundraising and written promotional materials, TBN (which is supplying the financing for the purchase) was continuing to seek donations from viewers to pay for the station well after it had represented to the Commission that it had the funds to do so. See Petition at 17.

In response to the Petition, NMTV has submitted a one page letter from The Bank of California (Exhibit 2 to Opposition). In its entirety, the letter states:

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December 7, 1990

Mrs. Jame Duff
Director
National Minority TV, Inc.
KMLM-TV
10760 E. Browder Street
Odessa TX 79760

Dear Mrs. Duff:

The Bank has entered into a commitment to make funds available to National Minority TV, Inc. in the amount of Three Million Six Hundred Thousand 00/100 Dollars (\$3,600,000.00) for the purchase of WTGI-TV, Channel 61, Wilmington, Delaware, subject to the terms and conditions of the commitment letter executed on this date between National Minority TV, Inc. and The Bank of California. The Bank's commitment to lend under this commitment letter expires on September 30, 1991.

We are very pleased to be of assistance in this matter.

Sincerely,
Brenda D. Brousseau
Vice President & Manager
Garden Grove Office

BDB: md
cc: file

This is patently not sufficient to provide reasonable assurance of financing. It contains no interest rate, terms, or collateral or security requirement. It does not state whether the author even knows who "National Minority TV, Inc." is. On its face, this letter provides no reasonable assurance of the availability of the loan. Northampton Media Associates, 4 FCC Rcd 5517, 5518-19 (1989); Albert E. Gary, 5 FCC Rcd 6235 (Rev. Bd. 1990); Las Americas Communications, Inc., 1 FCC Rcd 786, 788 (Rev. Bd. 1986) (citing Jay Sadow, 39 FCC2d 808, 810 (Rev. Bd. 1983)). It appears to be but a mere accommodation written with the understanding that TBN may claim assurance based on the letter but will actually raise the letter from TBN viewers later.

The Bank of California letter makes an internal reference to an additional letter. Vesting unto itself the right to determine what is relevant, NMTV has not produced that letter. Its nonproduction should be viewed as an admission against interest. Nonproduction of the original financial letter must be viewed as yet another of TBN's RKO-style pleading tactics -- feeding the Commission only the half-truths it deems helpful, rather than fully disclosing all relevant facts. Without the second Bank of California letter, the Commission must conclude that NMTV has totally failed to show any basis for certifying its qualifications.

The manner in which TBN has continued to seek donations is also a cause for concern. Appended hereto as Exhibit 16 is the declaration of Dan Hubbard, a TBN viewer. Mr. Hubbard affirms that, just a few weeks ago, he heard Crouch asserting on TBN that the Philadelphia acquisition would be completed by the middle of the next month. That is obviously impossible, and Crouch, who is well advised legally, had to know the statement to be false when made.^{14/} Yet the obvious intent of the statement was to entice viewers to give money to TBN to finance this acquisition.^{15/} See PTL of Heritage Village Church and Missionary Fellowship, Inc., 71 FCC2d 324 (1979).

^{14/} Jarad Broadcasting Co., Inc., 1 FCC Rcd 181, 192 n. 15 (Rev. Bd. 1986) (terming similar activity, motivated by benign desire for publicity rather than, as here, for fundraising, "inappropriate".)

^{15/} A related question is whether TBN will return viewers' money if the acquisition does not occur. Petitioner understands that TBN's practice is not to return donations voluntarily.

Consequently, the Commission should designate issues going to (1) whether NMTV is financially qualified; (2) whether it misrepresented its qualifications when certifying to them; and (3) whether TBN's on-air fundraising for the acquisition has been truthful in all respects.

VII. NMTV'S AND TBN'S DELIBERATE MISREPRESENTATIONS AND PATTERN OF REPORTING VIOLATIONS IN THIS MATTER BEAR THE MARK OF NONREPENTANT INCORRIGIBILITY, REQUIRING REVOCATION OF ALL NMTV AND TBN LICENSES

In litigating this matter, NMTV/TBN has deliberately misrepresented, withheld, or distorted so many facts about its operations that it is impossible to take any representation it makes at face value. NMTV/TBN is one of the most cynical and thoroughly corrupt licensees either underserved counsel has come

4. 1990: Calvary Chapter Outreach Fellowships organizes support for families of children held in "Set Free" cult.

5. February, 1991: TBN produces an hour long video intended to defend Aguilar and "Set Free" from the charges being raised by Calvary.

10. June 9, 1991: The Orange County Register publishes articles about "Set Free" (Exhibit 8 herein) documenting that Aguilar had been arrested on three felony child abuse charges and had plea bargained to one of them.^{16/}

11. June 16, 1991: Borowicz files, and his counsel faxes to NMTV counsel, a Motion for Further Extension of Time. The Motion manifested that Borowicz has received the Register articles and needs additional time to attempt to independently verify the allegations in the articles.

^{16/} The article, "A man with thrilling presence, troubled past", contained in Exhibit 8 hereto, is worth quoting at length:

In July, 1976, after a night of shooting pool and drinking wine, he got into a fight with his girlfriend at the home they shared with her two children.

"She got in my face and, you know, I shoved her against the wall. And her kid said something, so I punched her kid."

Police reports say Aguilar pulled the 7-year old from bed by his hair, then kicked him several times before slamming him face-first to the floor, loosening four teeth and bruising his jaw and lips.

Aguilar pleaded guilty to a reduced charge. Five months later, while awaiting sentencing, he was arrested again - this time for assaulting the 3-year old son of another girlfriend, Sandra DeFalco, now his wife.

Is an interview with Aguilar did not mention the




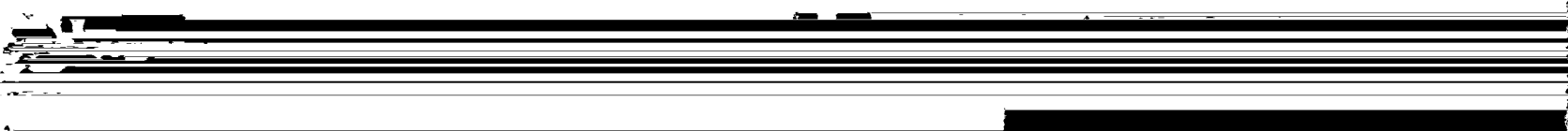
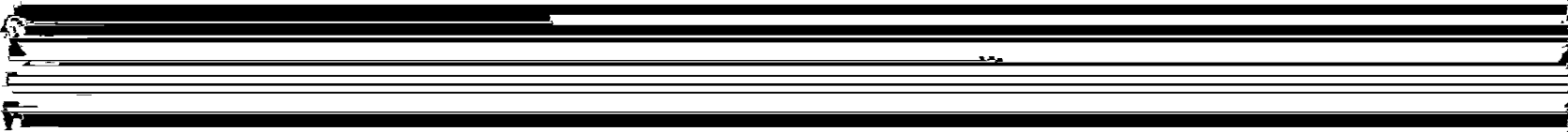

12. June 17, 1991: NMTV amends its application to report, for the first time, that Aguilar was convicted and did jail time for one felony count. That amendment, which is Exhibit 14 hereto, still does not mention that there were three felony counts, nor does it provide any detail concerning the full nature and extent of Aguilar's misconduct. Instead, using misleading and stale testimonial letters, NMTV attempted to argue that Aguilar had been "rehabilitated."

* * * * *

Not since Beaumont NAACP v. FCC, 854 F.2d 501 (D.C. Cir. 1988) has the Commission been faced with a licensee which told so many half-truths and changed its story so frequently. Crouch has known of Aguilar's criminal and jail record for years. Yet again and again, Crouch allowed NMTV applications to be filed without reporting Aguilar's background. Once caught, NMTV dissembled -- first by falsely stating that NMTV had just learned of Aguilar's misconduct when preparing the Opposition^{17/}, then by filing a misleading, grossly incomplete and self serving corrective amendment the day after Petitioner reported to the Commission the existence of the Register articles.

^{17/} In stating in its Opposition (p. 36 n. 23) that "[i]n preparing this pleading NMTV has discovered that Rev. Aguilar had been convicted of a criminal charge of assault" NMTV has inadvertently shown who really controls NMTV. Aguilar, supposedly the 1/3 owner of NMTV, surely had "discovered" this fact when it happened -- in 1976! What this statement must mean, then, is that Crouch just discovered it. That, of course, is untrue, as shown above, but no other meaning can be ascribed to this statement besides demonstrating that Aguilar is not part of the NMTV loop at all.

This would be bad enough if NMTV's misrepresentations concerning Aguilar were the only transgressions at issue. However, NMTV's Opposition is literally riddled with misrepresentations, half truths, and failures to be fully forthcoming. For example, the pleading style used by NMTV's Opposition to defend NMTV from Petitioner's charge that it is a sham (§III herein) -- affirmatively stating some facts, demurring on others when convenient. and placing the impossible burden on a



NMTV has utterly failed to adhere to this fundamental principle of administrative procedure. An agency should not have to depend on the fortuitous event of a petition to deny to learn the truth about an applicant or force the truth out of an applicant. And where, as here, even a petition to deny does not force the whole truth out of an applicant, that applicant cannot be allowed to hold any FCC licenses. This includes TBN, which, of course, controls NMTV. See Pass Word, Inc., 76 FCC2d 465 (1980) (revocation may be based solely upon a pattern of deliberate misrepresentation); WMOZ, Inc., 36 FCC 202, 237-39 (1964).

VIII. CONCLUSION

Petitioner respectfully submits that the Commission cannot grant this application without further investigation. Bilingual-Bicultural Coalition on the Mass Media v. FCC, 595 F.2d 621, 629-630 (D.C. Cir. 1978). Petitioner has made a more than sufficient factual showing, within his ability as a non-TBN insider. See Citizens for Jazz on WRVR, Inc., 775 F.2d 392, 397 (D.C. Cir. 1975) ("[i]t would be peculiar to require, as a precondition for a hearing, that the petitioner fully establish...what it is the very purpose of the hearing to inquire into."); Stone v. FCC, 466 F.2d 316, rehearing denied, 466 F.2d 331 (D.C. Cir 1972) (petition to deny process is too important to allow it to be subverted by failure of Commission to investigate serious allegations.)

As shown above, Petitioner's allegations go to the basic qualifications of TBN and its subsidiaries and affiliated entities, including NMTV and various public television entities, to be Commission licensees. Since the WTGI-TV application is for an assignment of license, TBN could escape review entirely by the "Sonrise" route: simply abandoning the application.

To prevent this, Petitioner respectfully requests the Commission to ask all of the TBN stations to file early renewal applications. See Leflore Broadcasting, Inc., 36 FCC2d 101 (1972). These applications may then be designated for hearing and thereafter denied.

Alternatively, the Commission may proceed directly to revocation of TBN's licenses under Section 312(a)(2) of the Act, allowing revocation due to "conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit on an original application."

For the foregoing reasons, the Commission should set the above referenced application for hearing: request TBN and other

Respectfully submitted,

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July 2, 1991

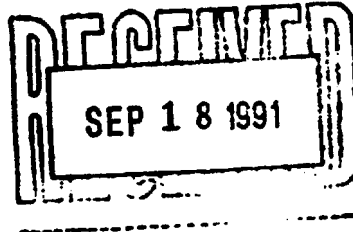
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

SEP 13 1991

IN REPLY REFER TO

8940-PRG



National Minority TV, Inc.
c/o Colby M. May, Esq.
May & Dunne, Chartered
1000 Thomas Jefferson St. NW
Suite 520
Washington, D.C. 20007

Re: Station WTGI-TV
Wilmington, DE
BALCT-910329KE

Gentlemen:

This is with respect to your application, in which National Minority TV, Inc. (National Minority) seeks to acquire the license of Station WTGI-TV, Wilmington, Delaware, from Delaware Valley Broadcasters Limited Partnership, Debtor-in-Possession. Dan Borowicz has filed a Petition to Deny. We have reached no determination on the merits of the application or the pleadings. However, we request additional information, so we can be more fully informed in determining whether grant of the application will serve the public interest.

As President of the Trinity Broadcasting Network (Trinity), Paul Crouch has an interest in its 12 commercial television stations. Section 73.3555(d)(1)(ii) of the Commission's Rules generally provides that no party can have an interest in more than 12 commercial television stations. However, Section 73.3555(d)(1)(i) allows a party to have an interest in as many as 14 commercial stations, as long as at least two of them are minority controlled. The Petitioner alleges that National Minority is controlled by Trinity, Crouch, or both, which, if true, would make the proposed acquisition inconsistent with the Rule.

Your application discloses that National Minority is a nonprofit organization with three directors and five officers. Crouch, who is not a member of a recognized minority group, is the President and one of the Directors. The other two Directors are Phillip Aguilar, who is Hispanic, and P. Jane Duff, who is Black. Each has one third of the voting rights as Directors of the organization; consequently, you assert, National Minority is minority controlled. Our questions concern that assertion.

According to the pleadings, in the June 9, 1991, edition of The Orange County Register, Aguilar is quoted as stating that he is merely a "figurehead," presumably for Trinity or Crouch, in the National Minority organization. Your response to that question is specifically requested.

In November, 1990, Aguilar replaced one of the three original directors, Phillip Espinoza. What are the circumstances that led to Espinoza's replacement by Aguilar? Describe the process by which Aguilar was elected as a